

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 8, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP1705

Cir. Ct. No. 2013SC7456

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

LILY MANAGEMENT LLC, LI ZHANG AND XIONG ZENG,

PLAINTIFFS-APPELLANTS,

V.

DEVIN G. THOMAS,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
JOHN C. ALBERT, Judge. *Affirmed and cause remanded with directions.*

¶1 BLANCHARD, P.J.¹ This appeal arises out of a small claims dispute between, on one side, Lily Management, LLC, and two persons who

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) and (3) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

identify themselves as Lily Management’s “administrators,” Li Zhang and Xiong Zeng, and on the other side, Devin Thomas, who formerly rented an apartment from Lily Management. Lily Management, Zhang, and Zeng appeal the circuit court’s order of July 9, 2014, which added Zhang and Zeng as plaintiffs in this case and ordered that judgment be entered in favor of Thomas and against Lily Management, Zhang, and Zeng for damages, costs, and attorney’s fees totaling \$14,500.00. For the following reasons, I affirm.

BACKGROUND

¶2 Given significant deficiencies in appellate advocacy by Lily Management, Zhang, and Zeng, some of which are referenced in the Discussion section below, only brief background is necessary.

¶3 Lily Management commenced this action on September 12, 2013, as a demand for a judgment of eviction of Thomas from an apartment owned by Lily Management, alleging as partial grounds Thomas’s non-payment of rent under the terms of a one-year lease (November 2012—November 2013). The circuit court began an eviction trial and took evidence on October 4, 2013. However, the court declined to grant a judgment of eviction to Lily Management and continued the trial pending the outcome of a City of Madison rent abatement proceeding. Thomas counterclaimed on April 18, 2014, making allegations that included wrongful eviction, wrongful disposition of her property, and failure to return a security deposit.

¶4 In a hearing on July 3, 2014, and in its July 9, 2014, written order, the circuit court made findings that included the following. Lily Management, under the direction of Zhang: “wrongfully removed and disposed of personal property belonging to Ms. Thomas,” worth \$4,213, “without a court order”;

“changed the locks at the apartment without a court order,” excluding Thomas from an apartment with a lease value of \$795 per month; and failed to return a \$795 security deposit within the required 21 days and provided no written accounting of security deposit deductions. The circuit court further found that Zhang and Zeng “are inseparably associated with Lily Management, either as owners or agents,” and, on this basis, held Zhang and Zeng personally liable for Thomas’s damages. The court determined that Thomas’s \$5,803.00 in damages must be doubled pursuant to WIS. STAT. § 100.20(5) and that she is entitled to costs and a reasonable attorney’s fee.²

DISCUSSION

¶5 I begin by acknowledging that Zhang and Zeng are not attorneys, while Thomas is represented by legal counsel. Zhang and Zeng have the right to take on self-representation and the representation of Lily Management in this small claims action. However, in doing so, Zhang and Zeng assume responsibility to comply with pertinent rules of procedural and substantive law. *See Waushara Cnty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). The right to proceed pro se does not grant “a license not to comply with relevant rules of procedural and substantive law.” *Id.* (quoted source omitted).

² Under WIS. STAT. § 100.20(5), courts are to award a tenant twice the amount of pecuniary loss, together with costs, including reasonable attorney’s fees, when a property owner has violated a provision of WIS. ADMIN. CODE § ATPC 134.09 (through Dec. 2014). Chapter ATPC 134 was adopted under the authority of § 100.20(2)(a), and a person who suffers monetary loss as a result of a violation of a provision of the chapter may sue under § 100.20(5). *See* WIS. ADMIN. CODE § ATPC 134.01. Section 100.20(5) provides: “Any person suffering pecuniary loss because of a violation by any other person of any order issued under this section may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney’s fee.”

¶6 Turning to the issues raised on appeal, Zhang, Zeng, and Lily Management argue that the circuit court “is violating WIS. STAT. § 704.17(2)(a)” by failing to grant the eviction judgment they sought, because Thomas did not present any evidence in her defense to counter the evidence that Zhang, Zeng, and Lily Management apparently presented to the circuit court. I reject this argument on the following two grounds: (1) Zhang and Zeng failed to request a transcript of the October 4, 2013, proceeding at which the court took evidence and continued the matter, and I assume that the record supports every fact essential to sustain the circuit court’s decision not to grant the eviction judgment, *see Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979); and (2) Zhang and Zeng fail to reply to Thomas’s argument to this effect, *see United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (appellant’s failure to respond in reply brief to an argument made in response brief may be taken as a concession).

¶7 Zhang, Zeng, and Lily Management argue that the circuit court “is violating [WIS. STAT.] § 799.215” by failing to render a decision within sixty days after “submission” of their case for eviction. I reject this argument on the following three grounds: (1) again, failure to request a transcript of the October 4, 2013 proceeding at which the court continued the matter; (2) failure to develop an argument that § 799.215 precludes a court from continuing an eviction proceeding in the manner the court apparently did here; and (3) failure to reply to Thomas’s argument on this last point. *See United Coop.*, 304 Wis. 2d 750, ¶39.

¶8 Zhang, Zeng, and Lily Management apparently intend to argue that, when they “cleaned up the apartment ... on December 6, 2013,” they were entitled to dispose of Thomas’s personal property under the authority of WIS. STAT. § 704.23, because the lease had expired and Thomas had allegedly moved out of

the unit. Section 704.23 provides: “[I]f a tenant remains in possession without consent of the tenant’s landlord after termination of the tenant’s tenancy, the landlord may in every case proceed in any manner permitted by law to remove the tenant and recover damages for such holding over.” However, Zhang, Zeng, and Lily Management fail to reply to the following assertion by Thomas, thereby conceding its merit for purposes of this appeal: “[R]enters cannot be denied possession of their rental property absent the due process outlined in chapter 799, Wis. Stats. *See* [WIS. ADMIN. CODE §§ ATCP] 134.08(1), 134.09(7).” *See United Coop.*, 304 Wis. 2d 750, ¶39.

¶9 Zhang, Zeng, and Lily Management briefly contend that the court’s money judgment against them “must be null and void” because “Thomas does not have standing to claim money in this eviction case.” I reject this argument because Zhang, Zeng, and Lily Management fail to reply to Thomas’s explanation of permissible counterclaims in this context, supported by legal authority. *See id.*

¶10 Zhang, Zeng, and Lily Management argue that the circuit court “is violating [WIS. STAT.] § 183.0304(1),” under which Zhang and Zeng cannot be held “personally liable for any debt, obligation or liability of” the limited liability company with which they are associated, Lily Management. I reject this argument because Zhang, Zeng, and Lily Management (1) again, failed to request a transcript of the October 4, 2013 proceeding at which the court heard evidence that would appear to have related to this issue; and (2) fail now to reply to Thomas’s citations to legal authority under which agents can be held responsible in this context and her assertion that Zhang and Zeng “did not contest at trial that they were agents acting on behalf of Lily Management, and that their actions caused Thomas’[s] damages.” *See United Coop.*, 304 Wis. 2d 750, ¶39.

¶11 Zhang, Zeng, and Lily Management make a brief, disjointed argument that the judgment against them “must be null and void” based on a failure of proof. I reject this argument on three grounds: (1) again, the failure to request the transcript containing pertinent information; (2) it is undisputed that Zhang, Zeng, and Lily Management passed on two opportunities to raise questions about the quality or nature of the proof under consideration by the court, effectively defaulting;³ and (3) they now fail to reply to Thomas’s arguments based on both of these grounds. *See id.*

¶12 Finally, Thomas requests that, if she prevails in this appeal, this court direct the circuit court on remand to award Thomas her reasonable attorney’s fees incurred in this appeal under the provisions cited in Footnote 2 of this opinion and *Shands v. Castrovinci*, 115 Wis. 2d 352, 361, 340 N.W.2d 506 (1983). Zhang, Zeng, and Lily Management do not object to this request. Thomas has prevailed on all issues in this appeal. On remand the circuit court shall award these fees.

By the Court.—Order affirmed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

³ Zhang, Zeng, and Lily Management failed to appear at the July 3, 2014 hearing, despite having received notice, and again failed to appear after the court decided, in the interests of fairness to Zhang, Zeng, and Lily Management, to give them a *second*, noticed opportunity to appear, on July 18, 2014.

